

## Chapter 34

### POLICE AND FIRE PROTECTION\*

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#### ARTICLE I. IN GENERAL

##### Sec. 34-1. Fee for fingerprinting.

(a) The police chief may impose a fee for fingerprinting services. The fee shall be based upon the cost of providing the service as determined by the police chief and shall not exceed \$10.00 per set of fingerprints recorded.

(b) The fee authorized under subsection (a) above shall not be imposed for:

- (1) Fingerprints recorded at the initiation of the police department in connection with criminal investigation and apprehension functions or other activities relating to law enforcement functions of the police department.
- (2) Fingerprints recorded at the request of another law enforcement agency in connection with criminal investigation or apprehension functions.
- (3) Fingerprints of minors that are recorded at the request of their parents in connection with child safety, missing children prevention, and related public service functions.
- (4) Fingerprints recorded in connection with licenses, permits, or other authorizations that are issued by departments of the city.
- (5) Fingerprints that are recorded in connection with applications for employment by the city.

(c) No fee shall be imposed under this section if its imposition is prohibited by a valid and applicable state or federal law, and no fee shall be imposed in excess of any fee limitation established by a valid and applicable state or federal law.

(Code 1968, § 34-103; Ord. No. 79-616, § 1, 4-17-79; Ord. No. 03-1302, § 1, 12-17-03)

##### Sec. 34-2. Temporary performance of duties of higher classification by firemen or policemen.

(a) Whenever the holder of a classified position in the fire or police department of the city is absent for one day or more, and, in the opinion of the chief of the fire or police department, it would be in the best interests of the operation of such department to fill the position temporarily, the chief of such department may designate in writing, copies of such designation to be furnished to the civil service department, the holder of a position in the next lower classification to fill such higher position temporarily.

(b) Any person designated under the terms of this section to fill a position in the higher classification temporarily shall be paid the base salary of the higher position plus his own longevity pay during the time he performs the duties thereof.

(c) The temporary performance of the duties of a higher position under the terms of this section by a person who has not been promoted to such position in accordance with the terms of article 1269m of the Revised Civil Statutes of Texas, and

\***Cross references**—Burglar and fire alarm protective services, Ch. 11; civil service, Ch. 14; city marshal, § 16-41 et seq.; miscellaneous provisions and offenses, Ch. 28; prisoners and prison farm, Ch. 35; notification to police and fire departments of street closing, § 40-29.

the civil service rules and regulations of the city governing the fire and police departments, shall never be construed to promote such person to the higher position.

(Code 1968, §§ 18-24, 34-5.1; Ord. No. 70-1835, §§ 1—3, 10-20-70; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-3. Payment for sick or vacation leave upon firemen's or policemen's death or termination of employment; repayment upon reemployment.**

(a) Reserved.

(b) Firefighters or police officers who are members of the classified service of the fire and police departments of the city may accumulate vacation time to a total of 720 working hours; however, any firefighter or police officer who leaves the classified service for any reason shall receive, in a lump sum payment, the full amount of his salary for the period of his accumulated vacation leave, minus any hours of vacation leave previously taken during the calendar year in which the termination occurs. However, any fire fighter or police officer who loses his life, or is forced to leave the classified service, as a result of a line of duty injury or illness, or the beneficiaries of such fire fighter or police officer, shall receive in a lump sum payment the full amount of his salary for the total number of his working hours of accumulated vacation time.

(c) For purposes of determining the amount to which a fireman or policeman or his beneficiaries is entitled under subsections (a) and (b) of this section, "salary" shall mean the authorized base pay of the employee plus the longevity rate he has attained up to the date of separation or death. For purposes of this section, "salary" shall not include educational or training incentive pay or any other form of premium pay except as provided above.

(d) Reserved.

(Code 1968, § 2-35; Ord. No. 71-1592, § 1, 9-1-71; Ord. No. 75-139, § 1, 1-28-75; Ord. No. 76-1882, § 1, 11-2-76; Ord. No. 78-180, § 1, 2-1-78; Ord. No. 90-1138, § 2, 9-19-90; Ord. No. 96-1076, § 5, 10-16-96; Ord. No. 96-1088, § 4, 10-23-96)

**Sec. 34-4. Authority of peace officers while under the influence of alcohol.**

No peace officer employed by the city shall be entitled to exercise any authority of his or her office while under the influence of alcohol at any time during which the officer is not engaged in the performance of his or her assigned work duties. For purposes of this section, a peace officer shall be considered to be "under the influence of alcohol" if the peace officer has any measurable concentration of alcohol in his or her blood, breath or urine. For purposes of this section "assigned work duties" shall only include times during which the peace officer is actually engaged in work scheduled and paid for by the city, whether during the peace officer's regularly assigned work shift or authorized overtime work for the city.

(Ord. No. 89-1704, § 1, 11-29-89)

**Secs. 34-5—34-20. Reserved.**

**ARTICLE II. POLICE DEPARTMENT\***

**Sec. 34-21. Created; general duties.**

There is hereby created a police department, which together with its officers and employees, is charged with the duties of preserving the public peace; detecting and preventing crimes; arresting violators of the law; protecting the rights of persons and property; preserving the peace at all public meetings and public places; preventing and removing, whenever possible, all nuisances on or in the streets, highways, alleys, waters, and all other places; regulating and controlling vehicular and pedestrian traffic on the streets and alleys; investigating traffic accidents and determining the cause and responsibility for such accidents; enforcing the Texas Penal Code; enforcing the penal ordinances of the city, and performing and discharging such other duties as are herein or which may hereafter be imposed upon it or them

\***Charter reference**—Authority to establish regulate, etc., police department, Art. II, § 16(a).

**Cross references**—Officers and employees generally, § 2-21 et seq.; airport police, § 9-6 et seq.; civil service, Ch. 14; miscellaneous provisions and offenses, Ch. 28; prisoners and prison farms, Ch. 35; traffic, Ch. 45; police to enforce traffic ordinances, § 45-8; authority of police officer to direct traffic, § 45-9.

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or any of them by the laws of the state, by the ordinances of the city, by the mayor or by the city council.

Without limitation of other assigned duties, the department shall be responsible for the enforcement of the neighborhood protection functions established in chapter 10 of this Code.

(Code 1968, § 34-1; Ord. No. 04-1075, § 10, 10-20-04)

**Sec. 34-22. Chief of police generally.**

There is hereby created the office of the chief of police in the police department of the city. The chief of police shall be appointed by the mayor and confirmed by the city council. Subject only to the orders and actions of the city council and mayor, the chief of police shall be the executive officer and director of the police department. He shall have management of the department, shall exercise all of the functions assigned to the department, and shall carry out the provisions of law and of ordinances with respect to such functions.

(Code 1968, § 34-2; Ord. No. 68-1756, § 1, 10-29-68; Ord. No. 05-91, § 9, 1-25-05)

**Charter reference**—Appointment of heads of administrative departments, Art. VI, § 7a.

**Sec. 34-23. Administrative rules and regulations.**

The chief of police shall promulgate administrative rules and regulations of the police department, with the approval of the mayor, governing the assignments, conduct, equipment, duties, responsibilities and authority of all officers and employees of the department, in relation to the customary assignments in the department, and

shall specify the kinds of uniforms to be worn and the equipment to be carried by officers and employees, subject to the approval of the mayor and city council, and the times and conditions under which such uniforms shall be worn and equipment carried. Such rules and regulations may further cover such other matters as the chief of police may deem necessary or expedient for the proper conduct of the work of the department and for making effective the provisions of this Code and other ordinances, and not inconsistent therewith. Subject to the city charter, ordinances, and rules and regulations of the civil service commission, the chief of police may punish officers and employees of the department for violation of the rules and regulations promulgated in accordance with this section. All such rules and regulations in effect shall be compiled, and published under the direction of the chief of police, and a copy of every rule and regulation to which he is subject shall be supplied to each officer and employee of the department.

(Code 1968, § 34-3)

#### **Sec. 34-24. Absence or disability of chief of police.**

The chief of police shall, from time to time, designate one of the persons holding the rank of assistant chief of police to discharge his duties during any time that the chief of police may be absent or otherwise unable to perform such duties. The person so designated shall be vested with the full authority of the office of chief of police when acting for the chief in that capacity.

(Code 1968, § 34-4)

#### **Sec. 34-25. Temporary officers and police reserve force.**

(a) The mayor, in case of a riot, flood, fire, or other public emergency, shall have power to appoint, for temporary service only and not to exceed 30 days, any number of temporary police officers and to discharge the same at will. Such temporary officers shall be paid by the city for service rendered the city in the discharge of their duties at a salary rate to be determined by the mayor.

(b) Pursuant to section 341.012 of the Local Government Code, the chief of police is hereby authorized to establish a police reserve force. The chief may establish rules and regulations governing the police reserve force not inconsistent with the provisions of this section of the Code of Ordinances.

(c) The chief of police may appoint members of a reserve police force who shall serve at the chief's discretion and who shall not receive any pay or other benefits except as provided herein.

(d) No person shall serve as a member of the police reserve force who does not meet the following qualifications:

- (1) A member must meet all of the qualifications for licensing as a reserve officer by the Texas Commission on Law Enforcement Officer Standards and Education.
- (2) The chief of police may prescribe additional written requirements that are related to the performance of the duties of the police reserve force.

(e) Members of the police reserve force shall serve as peace officers during the actual discharge of official duties. However, an appointment to the reserve forces must be approved by city council before the person is authorized to carry a weapon or otherwise act as a peace officer. After the appointment is approved, the appointee may carry a weapon only when authorized to do so by the chief of police and only when discharging official duties as a peace officer.

(f) The chief of police may call members of the reserve force into service at any time the chief considers it necessary to have additional officers to preserve the peace and enforce the law. Reserve officers may act only in a supplementary capacity to the regular police force may not assume the fulltime duties of regular police officers without complying with the requirements for regular police officers.

(g) The chief of police shall provide all training required for members of the reserve force to be certified by the Texas Commission on Law En-

forcement Officer Standards and Education and may provide additional training, uniforms and equipment as the chief determines is necessary. (Ord. No. 1968, § 34-5; Ord. No. 91-1324, § 1, 9-18-91)

#### **Sec. 34-26. Pension system.**

The city council hereby approves and adopts those acts of the legislature of the state pertaining to police officers' pension systems codified as article 6243g-1 of the Revised Civil Statutes of Texas, as amended, and to such extent as such action may be necessary for the establishment and creation of the fund set out in such article 6243g-1, such fund is hereby established and created. Such article 6243g-1 is hereby referred to, adopted as a part hereof, and incorporated herein by reference as fully as if such article were set out at length herein.

(Code 1968, § 34-6)

Charter reference—Authority for pension system, Art. II, § 20.

#### **Sec. 34-27. Refusing to assist police.**

It shall be unlawful for any person, having been summoned or commanded by any policeman for assistance in making an arrest, or in executing any other duty devolving upon him under any law of the city in relation to public offenses within the city, to refuse or neglect to obey such summons or command, provided, however, such policeman shall be dressed in the uniform of the police department or present official police department identification in order for a refusal or failure to obey such summons or command to constitute an offense.

(Code 1968, § 34-10; Ord. No. 76-359, § 1, 3-2-76)

#### **Sec. 34-28. Disposition of certain weapons.**

Any pistol, dirk, dagger, knife, slingshot or any weapon prohibited by the Texas Penal Code which comes into the possession of the police department during the course and scope of said department's duties which is not being held as evidence for use in trials or pending cases or which has not been ordered returned to the person entitled to possession of such item by a court of competent jurisdiction, which for a period of not less than 90 days has remained unidentified or

unclaimed by the lawful owner after notice to such owner as provided in section 34-29 et seq.\*, of this Code, or if the lawful owner cannot be determined shall be destroyed in the presence of three police officers of the rank of lieutenant or higher, who shall make a written report under oath listing the type, make, model and serial number, if any, of the item destroyed, together with the time, date, place and manner of destruction; provided, however, that abandoned pistols which the chief of police or his designated representative has determined to be serviceable may be transferred to the permanent city equipment inventory of the police department for usage by said department in the daily course of its business as if such pistols had been originally purchased by the city for that purpose; and provided further that in the case of abandoned pistols which have been classified as "antiques" or "collector's items" by a qualified expert in the firearms field, such pistols shall be disposed of pursuant to the provisions of article IV of this chapter. The chief of police or his designated representative shall determine and select such qualified expert in the firearms field to classify such pistols.

(Code 1968, § 34-14; Ord. No. 77-563, § 1, 3-16-77)

\*It should be noted that the provisions of former § 34-29 can now be found within Article VII of this chapter.

#### **Secs. 34-29—34-34. Reserved.**

Editor's note—Ord. No. 00-394, § 1, adopted May 17, 2000, repealed §§ 34-29—34-34 in their entirety. Formerly, said sections pertained to "unclaimed property", "abandoned property", "disposition list" defined; disposal of abandoned property by chief of police; acceptable proof of ownership required to assert claim to unclaimed or abandoned property; final disposition of abandoned property and disposition of perishable property or goods. See the Code Comparative Table.

#### **Sec. 34-35. Workweek; overtime compensation; sick leave; vacation.**

(a) Definitions. Unless otherwise indicated, the following words shall, for purposes of this section, have the following meanings:

- (1) *Compensatory time or compensatory time off.* Hours during which eligible employees are not working and which are not counted as hours worked during the applicable workweek for purposes of over-

time compensation and for which the employee's is compensated at the employee's regular rate.

- (2) *Eligible employee.* All classified members of the police department subject to the provisions of article 1269m of the Revised Civil Statutes of Texas.
- (3) *Overtime.* Time actually worked in excess of the 40 hours in a workweek.
- (4) *Regular rate of pay.* The regular rate of pay shall include:
  - a. Base pay;
  - b. Longevity pay;
  - c. Educational incentive pay;
  - d. Assignment pay; and
  - e. Higher classification pay, where authorized.

The term "regular rate of pay" shall not include compensation excluded under Section 7(e) of the Fair Labor Standards Act of 1938, as amended or the interpretative regulations and administrative or judicial opinions construing that section.

- (5) *Time actually worked or actual work.* The time the employee is actually on duty or on a council declared holiday, on authorized sick leave, vacation leave, compensatory time off, death in the family leave or any other authorized leave. Hours spent by a police officer doing the work of an injured or ill police officer pursuant to section 26(h) of article 1269m shall not count as time actually worked for purposes of overtime compensation.
- (6) *Workweek.* The workweek shall consist of a maximum of 40 hours of actual work within the consecutive 168-hour period beginning with the day shift Saturday.

(b) Eligible employees shall have a regularly scheduled workweek of 40 hours on a schedule established by the department.

(c) The police chief shall cause to be maintained accurate, complete and permanent records of all employee attendance and time actually worked during each workweek, and shall make

reports of attendance and time actually worked as may be prescribed by the civil service commission. He shall certify the correctness of the reports. The reports shall be forwarded to the human resources department on a weekly basis.

(d) All eligible employees shall be compensated for working overtime beyond their regularly scheduled workweek by the payment of either monetary compensation at the rate of 1½ times their regular rate of pay or compensatory time at the rate of 1½ hours for each overtime hour worked. The following shall apply to the payment of overtime compensation:

- (1) The chief of police or his designated subordinate shall verify that the overtime is needed to complete a required city service or operation.
- (2) Any eligible employee shall elect to have his or her overtime paid in cash or compensatory time. Such election shall be made on a form prescribed by the chief and filed with the department's payroll clerk prior to the end of the applicable pay period. Failure to file the prescribed form will be deemed to be an election for compensatory time. Where overtime is paid in cash it shall be paid in the pay period in which it is earned or as soon thereafter as is possible, taking into consideration both the work cycle and the payroll system used.
- (3) Where the employee is granted compensatory time the following shall apply.
  - a. The number of hours of compensatory time which may be accumulated shall not exceed 480.
  - b. Accrued compensatory time which is given must be used within 365 calendar days from the date accrued, provided that it does not unduly disrupt departmental operations. The police chief shall issue appropriate regulations governing the use of compensatory time.

- c. Accrued compensatory time not taken within 365 days from the date of accrual shall be paid for, in cash, at the greater of:

1. The employee's regular rate of pay over the last three years of employment by the city preceding the date of payment; or
2. The employee's regular rate of pay as of the end of the pay period preceding the date of payment.

Such payment shall be made in the pay period following the expiration of the 365-day period.

- d. The police department shall maintain detailed records of the accumulation and use of compensatory time on a form prescribed by the human resources director.
- e. Accumulated compensatory time shall be used in accordance with the first-in-first-out (FIFO) accounting principle.
- f. Any compensatory time accrued prior to April 15, 1986 and not used shall be carried on the records of the department until such time as it is used by the employee. The employee shall be entitled to monetary compensation for any compensatory time accrued prior to April 15, 1986, subject to the preceding limitations and restrictions.

(e) The police chief, or a designated subordinate may, subject to the operational requirements of the department, require an employee to work on a holiday subject to the following:

- (1) An employee who is scheduled to work on a holiday may be given a day off in the same workweek in lieu of the holiday or the employee shall receive half-pay in addition to regular pay for the hours actually worked on the holiday.
- (2) An employee who is called to duty on a holiday by virtue of an operational emergency shall be paid time and one-half for

the hours actually worked on such holiday in addition to regular pay for the holiday.

- (3) Where an employee's regularly scheduled day off falls on a holiday, the employee shall, subject to the operational requirements of the department, be given a day off in lieu of the holiday.
- (4) For purposes of scheduling a holiday where an employee is unable to take the holiday as specified in (e)(1) or (e)(3) above, a holiday shall have an hour value equal to the number of hours in the employee's regularly scheduled shift or workday. However, for purposes of computation of overtime, the holiday shall have a value of eight hours.
- (5) When a council declared holiday occurs during any paid leave of absence (vacation, sick time, injury on duty, etc.) the holiday is considered observed and that day's absence shall not be charged against the paid leave.

(f) The police chief may prepare and issue administrative guidelines to implement the provisions of section 26(h) of article 1269m wherein police officers are authorized to voluntarily do the work of an injured or ill police officer. The police department shall maintain records of all such assumed duty and the pay of the sick or injured police officer shall be continued only for that time during which a volunteer actually works on the behalf of the sick or injured police officer. This subsection shall provide the sole mechanism by which police officers may substitute themselves in the performance of the duties of another police officer.

(g) Employees of the police department who are classified pursuant to chapter 143 of the Texas Local Government Code, shall be granted sick leave consistent with applicable provisions of state law and article III of chapter 14 of this Code.

(h) Employees of the police department classified pursuant to article 1269m of the Revised Civil Statutes of Texas, shall earn 15 days of vacation with pay per year to be accrued at a rate of 1¼ days per month. After 15 years of service employees shall be entitled to a vacation according to the following schedule:

16 years.....	16 days
17 years.....	17 days
18 years.....	18 days
19 years.....	19 days
20 years.....	20 days
21 years.....	21 days
22 years.....	22 days
23 or more years.....	22 days

Employees whose absences on authorized vacation leave are for periods other than a full working day as defined herein shall be assessed vacation leave in proportion to the number of full working days or fractions thereof they are absent. (Code 1968, § 34-19; Ord. No. 77-2411, § 2, 11-22-77; Ord. No. 86-490, § 1, 4-9-86; Ord. No. 96-1088, § 5, 10-23-96; Ord. No. 96-1290, §§ 23, 24, 12-4-96)

#### **Sec. 34-36. Use of police academy driving track by private persons.**

(a) The chief of police or a person designated by him shall issue a permit for the use of the driving track at the city's police academy for low speed vehicular events upon proper application therefor and payment of the permit fee upon a first come-first served basis if:

- (1) The time and nature of the event shall not interfere with the use of the track or any other part of the police academy by the police department, any other city department, or governmental agency requiring or desiring the use thereof;
- (2) The event meets the conditions and terms of such regulations as may be adopted from time to time by the chief of police as he may find necessary or desirable to avoid injury to persons or damage to private or public property due to the use of the facility;

(3) The applicant and any other persons, organizations, firms and corporations on whose behalf the application is made have contractually agreed that they will, if granted the permit, jointly and severally, indemnify and hold the city harmless against liability for any and all claims for damage to property or injury to or death of persons arising in any manner out of their use of the facility;

(4) Liability insurance with limits not less than \$300,000.00 for each occurrence of property damage and \$1,000,000.00 for each person and \$1,000,000.00 for each occurrence for bodily injury or death be furnished in a form to protect the city and that evidence of such insurance be by a certificate of insurance or a policy naming the city as coinsured by appropriate endorsement. The insurance policy must be approved by the city attorney prior to the granting of any permit to use the facility.

(b) Any application for use of the driving track at the police academy shall be submitted to the chief of police on a form to be approved by the city attorney and supplied by the police department for that purpose no earlier than 180 days and no later than 30 days prior to the date use of the driving track is desired. The fee for a permit for use of the facility shall be submitted with the application.

(c) The permit fee for use of the driving track at the police academy pursuant to this section shall be \$5.00 for each hour or portion of an hour for which use of the facility is requested. Such fee shall be returned to the permit holder if the permit is withdrawn by the city on the grounds that the event would interfere with the use of the driving track or any part of the police academy by the city or any other governmental agency. The permit fee shall not otherwise be refundable.

(d) A permit issued pursuant to this section shall not grant any property right to the applicant and shall be subject to withdrawal by the city at any time up to and including the date of the proposed use of the driving track if the event will in any way interfere with any use of the driving track or any part of the police academy by the city or any other governmental agency.



(e) No fee may be charged for any spectators at any event held at the track at the police academy pursuant to this section.

(f) No participant, spectator or any person who is on the grounds of the police academy in connection with a low speed vehicular event shall consume or have in his possession any alcoholic beverage while on those grounds.

(Code 1968, § 34-20; Ord. No. 82-33, § 1, 1-12-82)

**Sec. 34-37. Acceptance of donations and loans of tangible property by the chief of police for the Houston Police Museum.**

The chief of police or his designated representative is hereby authorized to accept on behalf of the city, without action by the city council, donations and loans of tangible property for the Houston Police Museum. Any loan of tangible property pursuant to the authority of this section shall both be free of charge to the city and be documented by an agreement signed by the lender, which agreement includes all and only the following terms and conditions:

- (a) The city shall not be liable for the destruction or loss of an item unless said destruction or loss is due to the gross negligence of City of Houston employees while working within the course and scope of their employment. In no event shall the city be liable for more than the lesser of the following for any item:
  - (i) Five thousand dollars; or
  - (ii) The value of the item as indicated by the lender in the agreement.
- (b) It is understood by the lender that all items are subject to gradual inherent deterioration for which the city is not responsible. Although he has no duty to do so, director of the police museum ("director") may fumigate items which in his opinion show evidence of infestation.
- (c) The police museum may photograph items for educational and publicity purposes. It is understood that items on exhibit may be photographed by the general public.

(d) The chief of police, through the director, retains the right to determine when, if, and for how long items will be exhibited.

(e) Items will be returned to the lender at the site of the police museum upon 30 days written notice to the director. If the person who comes to take custody of an item is not the lender who signed the loan agreement, the chief of police, through the director, may demand proof that said person is authorized by the owner to take custody of the item. The person taking custody of the item will be required to sign an appropriate receipt prior to the return.

(f) If the police museum closes, the lender will receive notice thereof at the address listed on the loan agreement or at his new address if communicated to the director. Within 30 days of receipt of said notice, lender shall be required to take possession of the item. If the lender does not take possession of the item within said thirty-day period, the director will store the item at the lender's risk. If after one year of storage and after reasonable efforts have been made to contact the lender the item is still unclaimed, then in consideration of the item's storage and safe-guarding during such period, the lender shall be deemed to have made an unrestricted gift of the item to the police museum.

(Code 1968, § 34-21; Ord. No. 83-1744, § 1, 10-26-83)

**Sec. 34-38. Payment of cost of medical examination for victims of alleged sexual assault where examination requested by police department.**

(a) As used in this section:

- (1) *Sexual assault* and *aggravated sexual assault* are the offenses defined in Sections 21.011 and 21.021 of the Texas Penal Code.

(2) *Medical examination* includes a medical examination and all laboratory tests related to the alleged offenses of sexual assault and aggravated sexual assault as defined herein.

(b) The chief of the police department is hereby authorized to initiate a voucher for the payment

of medical examinations that are requested by an authorized member of such department. Such vouchers shall be based on bills submitted to the police department by the attending physician.

(c) No payment of a voucher for the cost of a medical examination shall be made without the approval of the director of the health department. The director shall review all payments for the appropriateness of the medical procedures and tests performed and the costs thereof. Such review shall be based on generally accepted medical standards for such procedures and fees.

(d) The chief of police may delegate the responsibility for authorizing and paying for such tests to any member of the police department.

(e) The director of the health department may delegate his responsibility for the review provided herein to any member of the health department who is licensed to practice medicine in the state. (Code 1968, § 2-24; Ord. No. 75-386, § 1, 3-11-75)

**Sec. 34-39. Acts of cruelty or harassment directed at horses of the mounted police.**

It shall be unlawful for any person to strike, prod, poke, torment, injure or make any physical contact with a horse, whether mounted or unmounted, which is in use on official duties by an officer of the Houston Police Mounted Patrol, which such person knows or should reasonably believe would tend to irritate, alarm, disturb, frighten or stampede such horse. Any physical action by a mounted patrol officer to use, direct or control his mount shall not be an offense under this section. Any offense under this section which also constitutes an offense under state law shall be punishable as provided by the applicable state law. (Ord. No. 85-649, § 1, 5-7-85)

**Sec. 34-40. Use of police training services by outside agencies.**

Priority shall be given in all training courses conducted by the police department to peace officers and peace officer candidates of the city. To the extent that any excess capacity may exist in any class or training course after city needs have been accommodated the police department may

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allow persons who are employed as peace officers or peace officer candidates by other jurisdictions to attend the class or training course. The chief of police may adopt administrative regulations regarding the offering of training to persons from other jurisdictions. The police chief or such member of the police department as the chief may designate shall establish training fees, registration fees, lab fees, printing fees, and other related fees for any training furnished to persons from other jurisdictions. The fees shall be payable for each person other than a city peace officer or candidate attending each class. The fees shall be based upon the city's cost of providing the services and shall be remitted to the city treasury. All fees shall be subject to the approval of the director of finance and administration.

(Ord. No. 91-975, § 1, 6-26-91)

Secs. 34-41—34-45. Reserved.

**ARTICLE III. FIRE DEPARTMENT\***

**Sec. 34-46. Created; duties generally.**

There is hereby created a fire department, the officers and employees of which, excepting those attending the firemen's training school, those designated as apprentice fireman and those who are on probation, are charged with the duty of preventing and extinguishing fires and conflagrations and preventing the loss of human life and property by fire, and doing all such other duties as are imposed upon them by ordinance of the city council. In addition to the duties and functions specifically set forth in this article for the various officers of the fire department, each of such officers and those employees acting under them shall perform such other and further duties as may be required of them by the mayor or their superior

\*Charter reference—Authority to establish, maintain, etc., fire department, Art. II, § 8.

Cross references—Officers and employees generally, § 2-21 et seq.; fire department emergency ambulance service, § 4-9; Fire Code, § 10-8; building constituting fire hazard generally, § 10-296 et seq.; dangerous buildings, § 10-326 et seq.; civil service, Ch. 14; authority of fire department officer to direct traffic, § 45-10; fire hydrants standard pipes, etc., generally, § 47-27 et seq.

**officers, or by the provisions of the state law, the charter and ordinances of the city.**  
(Code 1968, § 18-1; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-47. Administration division; duties generally.**

The administration division of the fire department and its personnel shall supervise and manage the fire department and shall be charged with the primary duty of seeing that the functions and duties of such department and each division and action thereof are duly performed and carried out, and shall do and perform, or cause to be done and performed, such other duties and functions that may be assigned to or required of the fire department, any of its divisions, sections and personnel by state laws, the provisions of the charter and ordinances of the city and by order of the mayor.

(Code 1968, § 18-2; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-48. Fire prevention division; duties generally.**

The fire prevention division of the fire department and its personnel shall be charged with the primary duty of enforcing all laws of the state and ordinances of the city covering the following:

- (1) The prevention of fires.
- (2) The storage and use of explosives and inflammables.
- (3) The installation and maintenance of automatic and other fire alarm systems and protection systems, fire extinguishers and equipment.
- (4) The maintenance and regulation of fire escapes.
- (5) The means and adequacy of exits in cases of fires from factories, schools, lodging houses, convalescent homes, hotels, asylums, hospitals, churches, public halls, theaters, and in all other places where numbers of persons work, live, or congregate from time to time for any purposes.
- (6) The investigation of causes, origin and circumstances of fire.

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(7) The conducting of fire prevention campaigns and the circulation of fire prevention literature, for the benefit of civic clubs, labor organizations, business and commercial enterprises, schools, factories, lodging houses, hotels, lodges, hospitals, convalescent homes, churches, halls, theaters and the general public in the interest of fire prevention and public safety.

(8) Such other duties as may be imposed from time to time by the mayor, the laws of the state, ordinances of the city, and by the chief of the fire department and the fire marshal.

(Code 1968, § 18-3; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-49. Auxiliary fire division.**

The auxiliary fire division of the fire department and its personnel shall supervise the program and work of the auxiliary firemen in the city and shall do and perform, or cause to be done and performed, such other duties and functions as may be assigned to or required of such division and its personnel by order of the mayor, by the chief of the fire department, and by the provisions of state laws, the charter and ordinances of the city.

(Code 1968, § 18-4; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-50. Divisions of fire department; general duties and responsibilities of each division.**

(a) The fire department shall consist of four (4) divisions, to be known as the fire suppression division, the fire alarm division, motor repair division and the fire prevention division.

(b) The fire suppression division and its personnel shall be charged with the primary duty of extinguishing fires and conflagrations and preventing the loss of human life and property by fire.

(c) The fire alarm division of the fire department and its personnel shall be charged with the primary duty of operating the fire alarm system in the city, and performing or causing to be performed such other duties and functions as may be

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assigned to or required of it or them by the mayor, the chief of the fire department, by state law and the provisions of the Charter or ordinances of the city.

(d) The motor repair division shall be charged with the primary duty of maintaining and repairing and keeping in good repair and working order any and all of the motor equipment and apparatus of the fire department.

(e) The fire prevention division and its personnel shall be charged with the primary duty of conducting inspections, reviewing plans for construction and conducting public information campaigns to reduce the loss of life and property by fire.

(f) In addition to the duties of the divisions and their personnel, as hereinabove set out, each division and its personnel shall do and perform, or cause to be done and performed, such other duties and functions as may be assigned to or required of such section by the mayor, the fire chief, and the provisions of the state law, the Charter and ordinances of the city.

(Code 1968, § 18-5; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-51. Employee regulations generally.**

All employees of the fire department shall be employees of the department and not of the several divisions or sections of divisions thereof. The title of each of the positions created in this article, as well as the provisions of this article setting forth the primary duties and functions of the divisions and sections of the fire department and its personnel, describe generally the duties and functions to be required of and performed by the employees holding such positions, but such employees shall do and perform such other and further duties and functions as may be required of them from time to time by order of their superior officers, the mayor, and by the provisions of the state law, the Charter and ordinances of the city. The holders of the positions assigned herein to a particular division or section of the fire department may be reassigned or transferred to do the same or related work from one division to another, or from one section to another, in either the same division or another, temporarily or perma-

nently, or reassigned or retransferred by the chief of the fire department at his discretion; provided, however, no change shall be made in the rank, title or salary of any employee unless such change shall have the approval of the mayor and be in conformity with the Charter, ordinances, and the rules and regulations of the civil service commission. The title of each of the holders of the positions herein created shall be in accordance with the terms of this article.

(Code 1968, § 18-3; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-52. Chief generally.**

(a) *Appointment; qualifications.* The chief of the fire department shall be appointed by the mayor and confirmed by the city council. No person shall be appointed to the office of chief of the fire department unless the person shall have had at least ten years' experience as a firefighter prior to the date of appointment and has served two years of such time either:

- (1) In the Houston Fire Department in the rank of senior captain or a higher rank;
- (2) In another fire department in a rank that is equivalent in duties and responsibilities to that of senior captain or a higher rank in the Houston Fire Department.

(b) *Oath.* The chief of the fire department, before entering upon his duties, shall take the constitutional oath of office.

(Code 1968, § 18-7; Ord. No. 73-2079, § 1, 11-21-73; Ord. No. 84-1778, § 1, 11-14-84)

**Charter reference**—Appointment of heads of administrative departments, Art. VI, § 7a.

**Sec. 34-53. Functions of chief.**

The chief of the fire department, subject to the direction and supervision of the mayor, shall be the executive officer and director of the fire department and the administration thereof, and he shall have full control, supervision and authority over all officers and employees, stations, buildings, apparatus, equipment and other property of the fire department or in the possession thereof. He shall attend such fires in the city as may demand his presence when within his power to do so. He shall exercise and perform or cause to be

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exercised and performed all of the duties and functions assigned to such department and any of its divisions and sections and shall carry out the provisions of laws and ordinances with respect to such duties and functions, and it shall be his duty to enforce or cause the enforcement of all laws, ordinances and regulations pertaining to the prevention and extinguishment of fires and fire hazards within the city and perform such other duties as are required of him by the laws of the state, the Charter and ordinances of the city, and the orders of the mayor.

(Code 1968, § 18-8; Ord. No. 73-2079, § 1, 11-21-73; Ord. No. 05-91, § 10, 1-25-05)

**Sec. 34-54. Assistant chiefs.**

The positions of assistant chief of the fire department shall constitute the second level of command within the department, and the holders thereof shall assist the chief of the fire department in the administration of the department by performing such duties as he may lawfully direct.

**Sec. 34-55. Absence or disability of chief.**

The chief of the fire department shall, from time to time, designate one of the persons holding the rank of assistant chief of the fire department to discharge his duties during any time that the chief may be absent or otherwise unable to perform such duties. The person so designated shall be vested with the full authority of the office of chief of the fire department when acting for the chief in that capacity.

(Code 1968, § 18-9; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-56. Fire marshal.**

The holder of the position of fire marshal shall be the assistant chief in charge of the fire prevention division of the fire department and, together with those employees holding the assisting positions within the fire prevention division, shall perform or cause to be performed all of the duties required of such division.

(Code 1968, § 18-10; Ord. No. 73-2079, § 1, 11-21-73; Ord. No. 92-345, § 1, 4-1-92)

**Sec. 34-57. Functions of other employees.**

The duties and functions of all other employees of the fire department, whose primary duties are not set forth in this article, shall be those set forth in the rules and regulations and classifications of the civil service commission, and the holders of such positions, in conformity with the state laws, the city Charter and ordinances of the city and the rules and regulations of the civil service commission, shall perform such duties and functions or such further or related duties and functions as may be required by the chief of the fire department by those in charge of such divisions of the fire department to which such employees may be assigned or reassigned by the fire chief.

(Code 1968, § 18-16; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-58. Police power at fires; authority to command reasonable assistance.**

The chief of the fire department and each of his assistants and all officers thereof shall have the same police power at all fires as the police officers of the city have. Any person refusing to comply with any reasonable orders given by the chief of the fire department, or any official in the fire department, shall be deemed guilty of a misdemeanor.

(Code 1968, § 18-19; Ord. No. 73-2079, § 1, 11-21-73)

**Sec. 34-59. Workweek; overtime compensation; sick leave; vacation leave.**

(a) Definitions. Unless otherwise indicated, the following words shall, for purposes of this section, have the following meanings:

- (1) *Compensatory time or compensatory time off.* Hours during which eligible employees are not working and which are not counted as hours worked during the applicable workweek for purposes of overtime compensation and for which the employee is compensated at the employee's regular rate.

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- (2) *Eligible employee.* All classified members of the fire department subject to the provisions of articles 1269m and 1269p of the Revised Civil Statutes of Texas.
- (3) *Overtime.* Dependent upon the duty assignment and work cycle of the firemen, overtime shall be that time worked in excess of either:
  - a. 40 hours in a workweek; or
  - b. An average number of hours of actual work per week over a calendar year of 46.7 hours as authorized by the provisions of article 1269p.
- (4) *Regular rate of pay.* Regular rate of pay shall include:
  - a. Base pay;
  - b. Longevity pay;
  - c. Educational incentive pay;
  - d. Assignment pay; and
  - e. Higher classification pay where authorized.

The term "regular rate of pay" shall not include compensation excluded under Section 7(e) of the Fair Labor Standards Act of 1938, as amended, or the interpretative regulations and administrative or judicial opinions construing that section.

- (5) *Workweek.* Dependent upon the duty assignment and work cycle of the fireman, the workweek shall be either:
- Forty hours of actual work within the consecutive one hundred sixty-eight-hour period beginning with the dayshift Saturday; or
  - An average number of hours of actual work per week over a calendar year of 46.7 hours as authorized by the provisions of article 1269p.
- (6) *Time actually worked or actual work.* The time the employee is actually on duty or on a council declared holiday, on authorized sick leave, vacation leave, compensatory time off, death in the family leave or any other authorized leave, provided that this is for the purpose of overtime calculations dealt with in this section only and not for purposes of determining compliance with article 1269p, section 6(D) of the Revised Civil Statutes of Texas, which shall be governed by state law. Hours spent by a fireman doing the work of an injured or ill fireman pursuant to section 26(h) of article 1269m shall not count as hours worked for purposes of overtime compensation. Hours worked in "substitution" pursuant to subsection (f) hereof shall not be counted as time actually worked for purposes of overtime compensation. Calculation of time actually worked shall commence upon the arrival of the fireman at his or her assigned place of duty for the particular duty day at the time established for the commencement of the work shift.
- (b) Eligible employees shall have a regularly scheduled workweek on a schedule established by the department. Any fireman whose duties involve either the extinguishment of fires or the delivery of emergency medical services shall be entitled to overtime pay for those hours in excess of the scheduled work cycle as established pursuant to article 1269p. Any fireman whose duty assignment is not described by the foregoing shall be entitled to overtime pay for all time actually worked in excess of his or her forty-hour workweek.
- (c) The fire chief shall cause to be maintained accurate, complete and permanent records of all employee attendance and time actually worked during each workweek. He shall make reports of attendance and time actually worked as may be prescribed by the civil service commission. He shall certify the correctness of the reports. The reports shall be forwarded to the human resources department on a weekly basis.
- (d) All eligible employees shall be compensated for working overtime beyond their regularly scheduled workweek by the payment of either monetary compensation at the rate of 1½ times their regular rate of pay or compensatory time at the rate of 1½ hours for each overtime hour worked. The following shall apply to the payment of overtime compensation:
- (1) The fire chief or his designated subordinate shall verify that the overtime is needed to complete a required city service or operation.
  - (2) Upon request of the fireman, the fire chief may, in his discretion, grant compensatory time in lieu of cash payment for overtime. Where overtime is paid in cash it shall be paid in the pay period in which it is earned or as soon thereafter as is possible, taking into consideration both the work cycle and the payroll system used.
  - (3) Where the employee is granted compensatory time the following shall apply:
    - a. The number of hours of compensatory time which may be accumulated shall not exceed 480.
    - b. Accrued compensatory time which is given must be used within 365 calendar days from the date accrued, provided that it does not unduly disrupt departmental operations. The fire chief shall issue appropriate regulations governing the use of compensatory time.
    - c. Accrued compensatory time not taken within 365 days from the date of accrual shall be paid for, in cash, at the greater of:
      1. The employee's average regular rate of pay over the



employee's last three years of employment by the city preceding the date of payment; or

2. The employee's regular rate of pay as of the end of the pay period preceding the date of payment.

Such payment shall be made in the pay period following expiration of the three hundred sixty-five-day period.

- d. The fire department shall maintain detailed records of the accumulation and use of compensatory time on a form prescribed by the human resources director.
- e. Accumulated compensatory time shall be used in accordance with the first-in-first-out (FIFO) accounting principle.
- f. Any compensatory time accrued prior to April 15, 1986 and not used shall be carried on the records of the department until such time as it is used by the employee. The employee shall not be entitled to monetary compensation for any compensatory time accrued prior to April 15, 1986.

(e) All classified firefighters of the fire department who are subject to the provisions of chapter 142 and chapter 143 of the Local Government Code shall be entitled to the same number of holidays or days in lieu thereof as are granted to all other employees of the city as provided below:

- (1) All holidays shall have an accrual value of eight hours. When a classified employee is unable to take the holiday, he or she shall have eight hours posted to his or her accrued holiday balance. When an accrued holiday day is taken in lieu of the regularly scheduled holiday, eight hours will be charged; however, its usage value will be dependent upon the shift worked by the classified employee at the time the day in lieu of the holiday is taken. Any classified employee in the Emergency Operations Division assigned to the average

of 46.7 hours per week work schedule shall receive 12 hours off for each holiday accrued. Classified personnel assigned to ten-hour work days shall receive ten hours of leave and all other classified personnel shall receive eight hours off for each holiday accrued.

- (2) Where a holiday falls on a regularly scheduled day off, any employee so affected shall accrue the holiday in the manner described in subsection (e)(1) above.
- (3) Employees in the Emergency Operations Division and assigned to the average of 46.7 hours per week work schedule who are normally scheduled to work on the actual dates of July 4th, December 24th, December 25th, and January 1st, as well as the following City approved Holidays (Martin Luther King Jr. Day, Memorial Day, Labor Day, Veteran's Day, Thanksgiving Day, and the day after Thanksgiving Day) shall accrue two holidays, provided the member is physically on-duty and completes the entire 24-hour shift, beginning at 0630 hours of the holiday in question. The holidays will accrue as two eight-hour accruals for the holiday shift worked.

Employees in the Emergency Operations Division, not normally scheduled to work, that are called in to work on the actual dates of July 4th, December 24th, December 25th, and January 1st, as well as the following City approved Holidays (Martin Luther King Jr. Day, Memorial Day, Labor Day, Veteran's Day, Thanksgiving Day) shall accrue one eight-hour accrual for the holiday shift worked.

- (4) Employees in the Emergency Operations Division and assigned to the average of 46.7 hours per week work schedule who are not normally scheduled to work, that are called in to work on the actual dates of July 4th, December 24th, December 25th and January 1st, as well as the following City approved Holidays (Martin Luther King Jr. Day, Memorial Day, Labor Day, Veteran's Day, Thanksgiving Day, and the

day after Thanksgiving Day) shall be paid at the rate of time and one-half the hourly rate for actual hours worked during the 24-hour period beginning at 0630 hours of the holiday in question in lieu of the extra board straight time rate.

- (5) When a holiday occurs during any paid leave of absence (vacation, sick time, injury on duty, etc.), the holiday is considered to have not been observed and the holiday shall be accrued and that day's absence will be changed against paid leave.
- (6) Any classified employee who terminates his or her employment and has an accrued holiday leave-balance shall be paid for such holidays, not to exceed a total of 11 holidays. The limitation of 11 holidays shall not apply to a classified employee who leaves the classified service because of disability or death, and in such event, the employee, or his/her estate, shall be paid for all of the accrued holiday balance. All holidays for which payment is made upon termination, disability or death shall be valued at eight hours, regardless of the scheduled work hours or duties assigned to the firefighter at the time they were earned.

(f) The fire chief shall prepare and issue administrative guidelines to implement the provisions of section 26(h) of article 1269m wherein firemen are authorized to voluntarily do the work of an injured or ill fireman.

(g) If the fire chief elects to permit "substitution," as that term is used in the context of the Fair Labor Standards Act and as the practice is described by section 7 of article 1269p, he shall prepare and issue administrative guidelines to implement the provisions of section 7 of article 1269p subject to all applicable provisions of the Fair Labor Standards Act and the interpretations thereof.

(h) The fire chief shall prepare and issue administrative guidelines regarding on-call status for firemen. Such guidelines shall be structured so as to limit the number of firemen on-call to a number reasonably required to meet the needs of

the department. Further, such policy shall conform with the standards pertaining to overtime pay for on-call time under the Fair Labor Standards Act of 1938, as amended, and the interpretations thereof.

(i) Employees of the fire department classified pursuant to article 1269m of the Revised Civil Statutes of Texas, shall be allowed sick leave consistent with the provisions of section 26(b)(a) of article 1269m and Ordinance No. 84-1962, as amended. When a sick day is taken, its value will be dependent upon the shift or duty assignment held by the fireman at the time the day is taken. Any fireman engaged in fighting fires or the actual delivery of emergency medical services shall receive 12 hours off for each sick day taken. All other classified personnel shall receive eight hours off for each sick day taken. Officers and employees whose absences on authorized sick leave are for periods other than a full working day as defined herein shall be assessed sick leave in proportion to the number of full working days or fraction thereof they are absent.

(j) Officers and employees of the fire department classified pursuant to article 1269m of the Revised Civil Statutes of Texas, shall earn 15 days of vacation with pay per year to be accrued at a rate of  $1\frac{1}{4}$  days per month. After 15 years of service employees shall be entitled to a vacation according to the following schedule:

16 years .....	16 days
17 years .....	17 days
18 years .....	18 days
19 years .....	19 days
20 years .....	20 days
21 years .....	21 days
22 years .....	22 days
23 or more years .....	22 days

When a vacation day is taken, its value will be dependent upon the shift held by the fireman at the time the day is taken. Any fireman engaged in fighting fires or the actual delivery of emergency medical services shall receive 12 hours off for each vacation day taken. All other classified personnel shall receive eight hours off for each vacation day taken. Officers and employees whose absences on authorized vacation leave are for periods other than a full working day as defined

herein shall be assessed vacation leave in proportion to the number of full working days or fractions thereof they are absent.

(Code 1968, § 18-20; Ord. No. 73-2079, § 1, 11-21-73; Ord. No. 74-2184, § 1, 12-17-74; Ord. No. 77-2411, § 1, 11-22-77; Ord. No. 79-1035, § 1, 6-21-79; Ord. No. 80-2873, § 1, 9-30-80; Ord. No. 81-1319, § 1, 7-8-81; Ord. No. 86-489, § 1, 4-9-86; Ord. No. 86-517, § 1, 4-15-86; Ord. No. 92-1412, § 1, 10-28-92; Ord. No. 94-189, § 1, 2-23-94; Ord. No. 94-1005, § 1, 9-21-94; Ord. No. 96-1290, §§ 25, 26, 12-4-96; Ord. No. 98-669, § 1, 8-19-98)

#### **Sec. 34-60. Retirement age.**

No fireman shall be permitted to remain on active duty with the fire department of the city after the date on which he attains the age of 65 years or over, but any such fireman shall be retired from the service on the birthdate at which he attains the age of 65 years or over.

(Code 1968, § 18-21(g); Ord. No. 73-2079, § 1, 11-21-73)

#### **Sec. 34-61. Hazardous materials response team service; charges.**

(a) In this section, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

*Business entity or person* means any corporation, sole proprietorship, partnership, limited partnership, person, firm or other similar entity engaged in any commercial, business or industrial transactions of any nature.

*Fire Chief* shall mean the Fire Chief of the City of Houston and such persons as he may designate to perform his duties under this section.

*Hazardous materials* means any flammables, explosives, radioactive materials, hazardous waste, toxic substances or related materials, including substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in or pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource

Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq.; or the Texas Solid Waste Disposal Act, as amended, Texas Health & Safety Code § 361.001, et seq.

*Hazardous materials response team or team* means the hazardous materials response team of the city's fire department.

*Responsible party* means, jointly and severally, all persons involved in the possession, ownership or transportation of any hazardous material that is released or abandoned, or who have legal liability for the causation of an incident resulting in the release or abandonment of any hazardous material.

*Service* means a response by the team to an incident involving a leakage, spill and/or other release and/or abandonment of any hazardous material.

*Service call* means the period of time from the arrival of the team at the site where the service is to be performed to the return of the team to on-call status at the incident site.

(b) In order to partially defray the costs incurred by the city in providing service by the team, charges are hereby established to be paid by and collected from the responsible party. As an alternative means of recoupment of some of the costs of hazardous materials service there is hereby established a voluntary program by which any business entity or person may choose to pay an annual contribution to the city in order to exempt such entity or person from the necessity of paying specific service charges for any incident for which that entity or person bears responsibility for a period of one year. Any business entity or person may be exempt from the charges specified for the services of the team for any hazardous materials incident occurring within a period of one year; provided that the business entity has made a voluntary contribution for that year. The amount of the charges and of such voluntary annual contributions shall be as authorized by city council motion from time to time upon the request of the fire chief.

(c) Notwithstanding any other provision of this section, any individual who constitutes a responsible party as hereinabove defined shall not be required to pay charges authorized under subsection (b) or to make any voluntary contributions allowed under subsection (b) of this section for the release or abandonment of any hazardous material if all of the following conditions are met:

- (1) The individual otherwise responsible or liable for the release or abandonment of a hazardous material is not involved in the possession, ownership or transportation of the hazardous material as the employee, agent or servant of any business entity or person;
- (2) The individual involved in the possession, ownership or transportation of the hazardous material released or abandoned is so involved solely for private, noncommercial purposes related to the individual's own residential property, real property or private personal property, and the individual receives or is to receive no compensation for any services involving the hazardous materials; and
- (3) The hazardous materials possessed, owned or being transported by the individual are in forms, quantities and containers ordinarily and lawfully available for sale as consumer products to members of the general public.

Provided, however that nothing in this section shall be construed to exempt any individual from compliance with the reporting requirement of subsection (e) of this section.

(d) The city council may by contract enter into mutual aid agreements for hazardous material response services with various persons. No charge shall apply where a contract calls for reciprocal service without charge.

(e) It shall be the duty of each responsible party to report any incident involving any leakage, release, spill or abandonment of any hazardous materials to the fire department dispatcher immediately upon discovery of the same, or as soon thereafter as possible. Any person who violates any provision of this section shall be guilty

of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$250.00 nor more than \$2,000.00.

(f) This section shall not apply to hazardous materials possessed, owned or transported by the city, the State of Texas (including its political subdivisions) or the federal government.

(g) The Fire Chief shall promulgate procedures for billing and collection of charges and for collection and processing of voluntary annual contribution payments. The Fire Chief shall have the authority to adopt regulations necessary to implement or enforce this section. The city attorney is authorized and directed to institute any legal proceedings necessary to collect any charges due hereunder.

(Ord. No. 92-1503, § 1, 11-18-92; Ord. No. 94-299, § 2, 3-30-94)

#### **Sec. 34-62. Adopt-A-Fire Station program.**

(a) The Adopt-A-Fire Station program is hereby created. The program shall be used to assist the city in its effort to maintain, refurbish, and renovate fire stations. The director of the building services department and the fire chief shall jointly administer the program and shall promulgate rules and procedures for administering the program.

(b) The fire chief or his designated representative is hereby authorized to accept on behalf of the city, without action by the city council, donations of tangible property and services for the program. All donations of tangible property become the property of the city.

(c) The fire chief shall, periodically, promulgate a list of fire stations that have the greatest need along with a master list of needed tangible property and services for these and all other stations. The donating party may designate a specific fire station to receive a donation, otherwise, donations may be distributed at the discretion of the fire chief. Donations shall meet the following criteria:

- (1) The Adopt-A-Fire Station program will accept items included on the program's master list of needed items, supplies, and

materials; however, donations of items not on the list may be accepted at the discretion of the fire chief;

- (2) Tangible property must be new; and
- (3) Except for manufacturer's labels or seals, tangible property must be free from noticeable corporate identifying logos, marks, or advertisements.

(d) The donating party shall apply in writing and the application must be approved by the fire chief or his designated representative prior to the acceptance of any donations. The application shall include at least the following information:

- (1) An inventory of items or services to be donated;
- (2) Proof of ownership of tangible items; and
- (3) For services, proof of insurance for corporate entities and release of liability for individuals.

(e) Valuation of donations for purposes of any applicable tax benefits shall be the responsibility of the donating party.

(Ord. No. 02-976, § 2, 10-30-02)

**Secs. 34-63—34-125. Reserved.**

#### **ARTICLE IV. NEWS MEDIA IDENTIFICATION**

##### **Sec. 34-126. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Emergency*: A sudden unexpected or unscheduled happening that calls for immediate action.
- (2) *Official municipal line*: A discretionary designation by the official in charge in municipal facilities and at municipal events and functions beyond which the general public may not pass. This generally but not exclusively applies to the media facilities in the police department, fire depart-

ment, and city hall as well as to public events necessitating the presence of the mayor or other public officials.

- (3) *Personal card*: A news media identification card issued pursuant to the provisions of this article.
- (4) *Police or fire line*: A discretionary designation by the official in charge at a police or fire emergency scene beyond which the general public is restrained.
- (5) *Print and electronic media*: Includes newspapers, news-gathering agencies, news photography agencies, motion pictures news-reel agencies, radio broadcasting companies, television companies, and any other medium which is engaged in the gathering and reporting of news events which are issued or presented at regular intervals to the general public or regularly distributed to other news media.
- (6) *Regularly*: Occurring at fixed or uniform intervals.
- (7) *Routinely*: A regular course of action, i.e., an activity engaged in daily or with reasonable frequency.
- (8) *Unauthorized person*: A person who is not a holder of a news media identification card or news media vehicle card or who is not an official or employee of the city with a duty to respond to official scenes or events.
- (9) *Vehicle card*: A news media vehicle identification card issued pursuant to the provisions of this article.

(Code 1968, § 2-311; Ord. No. 78-1630, § 1, 8-15-78)

##### **Sec. 34-127. Authority of chief of police to issue news media identification cards; to whom issued.**

The chief of police is hereby authorized to issue news media identification cards (hereinafter referred to as a "personal card") and news media vehicle identification cards (hereinafter referred to as a "vehicle card") to news-gathering representatives of electronic and print media organizations that maintain a news service which regu-